

ON TRACK WITH MDT

March 2002

As you may know, the intricacies of MDT's Disadvantaged Business Enterprise (DBE) program can be confusing, especially to our business partners. While complex, the DBE program has two highly public functions: 1) it certifies construction businesses owned by minorities, females and other socially/economically disadvantaged individuals, and 2) it monitors the bidding and construction process to ensure that a level playing field is created in which DBEs can compete fairly for federal assisted contracts. Like our other civil rights efforts, the DBE program is a federally mandated program, and our staff's job is to ensure that those regulations are met. Because parts of the regulations are lengthy and hard to define, I am going to address some of the more frequent DBE questions our civil rights staff encounter.

1) How does MDT determine Montana's overall annual DBE goal?

According to criteria in 49 CFR Part 26, each state must develop a goal setting program that conforms to the regulatory requirements contained in the Code of Federal Regulations. One of our partners, the Montana Contractors Association (MCA), has established a DBE sub-committee that has assisted MDT in annual goal development for the past two years. Collectively, we use a two-step process that determines the final annual goal for the state, a simplified version of which is detailed below.

- a. Determine the primary business activity code for each firm bidding on DOT-assisted projects. Once a firm has identified its appropriate activity code, it categorizes itself as a prime contractor, subcontractor or consultant. These categories are then assigned an appropriate percentage based on the amount of work expected in the upcoming construction season.

To complete the equation, the total number of certified DBEs is divided by the total number of firms in each category. This figure is then applied to the applicable percentage for that category. By totaling all categories, a base DBE figure is determined.

- b. Once the base figure has been established, MDT and the DBE sub-committee examine all of the available data to determine whether they need to adjust the base figure in any way. While the regulations and MDT's plan identify several areas that must be examined, the capacity of currently certified DBEs to perform work on federal-aid contracts is a key element of this review. Once all the evidence has been examined and any necessary adjustments made, step two is complete, and the annual goal is established. More detailed information on MDT's goal-setting process is available at www.mdt.state.mt.us/civilrights. The annual goal setting process is described on page 4 of the DBE manual.

2) What do “race conscious” and “race neutral” mean, and what is the current DBE goal?

When MDT is required to put DBE goals on projects because contractors are not meeting the overall annual goal, those project-specific goals are termed race conscious (RC). The term race neutral (RN) refers to the contracting community's consistent and continuous accomplishment of the overall annual goal that allows MDT to place 0% goals on federal-aid projects. MDT must meet the maximum feasible portion of our goal using race neutral means.

The DBE goal for federal fiscal year 2002 (October 1, 2001 through September 30, 2002) is 8.2%. The MDT and MCA subcommittee members projected that 1.2% would be achieved via RC goals and that 7.0% would be achieved via RN goals.

3) Why are there no DBE goals established on projects for some bidlettings?

In following CFR guidelines, MDT's Civil Rights Bureau staff monitor the use of RN and RC goals to ensure that race-conscious participation does not exceed the maximum stated percentage. At the time of advertising for the January and February 2002 projects, the RC achievement had exceeded the 1.2% projected amount and we were required to discontinue the use of RC goals. We will resume using RC goals if the participation level falls below the projected amount.

4) Why do I have to fill out the Schedule of Participation (SOP) if there are no project-specific goals in the project that I am bidding on?

Annual goal accomplishment is calculated monthly after each bidletting. Completion of the SOP indicates a commitment to a specific DBE firm, and that commitment is counted toward the overall goal. If prime contractors do not commit to the use of DBEs at each bidletting, goal accomplishment begins to slide, requiring MDT to establish RC (race conscious) goals in the next month's bidletting.

I hope that this information, though brief, will foster a greater understanding and appreciation of the DBE program, for educating our partners and meeting federal mandates are essential components of staying “on track” with MDT.

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